

IT 95-33
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS         )  
                           )  
      v.                   )   Docket:  
                           )  
XXXXXX                    )  
                           )   Hollis D. Worm  
                           )   Administrative Law Judge  
Taxpayers(s)              )  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely Protest by XXXXX (hereinafter referred to as the "taxpayer") to a Notice of Partial Refund (hereinafter referred to as the "Notice") issued to him on October 25, 1991. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer incorrectly computed the Federal Net Operating Loss (hereinafter referred to as the ("F.N.O.L.") for Illinois purposes.

In his Protest to the Notice, the taxpayer contends that when the 1990 F.N.O.L. (which he contends should be \$24,662 instead of \$23,158 as allowed by the Department) was entered into the 1989 federal return, it not only decreased federal adjusted gross income, it had the effect of allowing previously disallowed 1989 passive losses, thus increasing the amount of F.N.O.L. to be carried back to 1989. The taxpayer did not request a formal hearing in this matter. Therefore, the following issue is being heard on the information provided by the taxpayer in his Protest and on the Notice of Partial Refund: 1) whether the Department correctly recomputed the

F.N.O.L. for Illinois purposes?

Following a review of the documentation, it is recommended that this case be decided in favor of the Department.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Partial Denial which indicates that the taxpayer incorrectly computed his F.N.O.L. for Illinois purposes for the 1989 taxable year.

2. The taxpayer filed a claim for refund for the 1989 taxable year based upon a F.N.O.L. for the 1990 taxable year.

3. The Department approved this claim in part.

4. The taxpayer filed a timely protest to the Notice, and did not request a formal hearing.

5. The taxpayer failed to present competent evidence that the proposed adjustments in the Department's Notice of Partial Refund are incorrect.

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/203 et seq. imposes Illinois income tax liability on a taxpayer's "net income". Net income is defined as "base income" less certain amounts not relevant to this matter. For an individual, base income is the taxpayer's federal adjusted gross income (hereinafter referred to as "Federal AGI") subject to specifically enumerated addition and subtraction modifications. 35 ILCS 5/203(a).

The Department partially approved the taxpayer's claim for refund for the 1989 tax year, in part by correcting line 1 of his claim to reflect the proper amount of F.N.O.L. to be carried back for Illinois purposes. For Illinois purposes, a F.N.O.L. is allowable only to the extent that Federal AGI is affected. Federal adjustments that would create, increase or decrease a loss are necessarily disregarded because of the statutory

definition of base income. 35 ILCS 5/203(a).

In his letter of Protest, the taxpayer did not request a formal hearing. 35 ILCS 980(a) Therefore, the rebuttal to the Department's prima facie case in this cause is found in the taxpayer's representations as found in his written Protest.

The taxpayer's assertion that the F.N.O.L. should be \$24,662 instead of the \$23,158 as allowed by the Department, and that the F.N.O.L. had the effect of allowing previously disallowed 1989 passive losses, without providing any legal authority, is not sufficient to overcome the prima facie correctness of the Department's Notice of Partial Denial. The Notice of Partial Denial is prima facie correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill.App.2d 210 (3rd Dist. 1983). In order to overcome this prima facie correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill.App.3d 11 (1st Dist. 1978). The taxpayer has failed to meet that burden in this case.

A taxpayer cannot overcome the Department's prima facie case merely by denying the accuracy of its assessments. Smith v. Department of Revenue, 143 Ill.App.3d 607 (5th Dist. 1986); Puelo v. Department of Revenue, 117 Ill.App.3d 260 (4th Dist. 1983). Here, the taxpayer's challenge was unaccompanied by any documentary support. Accordingly, the taxpayer failed to overcome the Department's prima facie case.

Hollis D. Worm
Administrative Law Judge

May 9, 1995